IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.73 of 2005

Date of Decision: July 26, 2007

RAM Tech Corporation **....Petitioner**

through Mr.A.S.Narang , Advocate

v.

State of Punjab and others **....Respondents**

through Mr.A.G.Masih, Senior Deputy Advocate General, Punjab.

Mr.Sarjit Singh, Sr. Advocate with Mr.Jagdev Singh, Advocate.

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as, `the Act') has been filed by the petitioner relying on the arbitration clause as contained in the arbitration agreement which is to the following effect:-

"14. Arbitration

a. In the event of any dispute or difference arising under this condition or any special condition of contract in connection

with this contract, the same shall be referred to the Financial Commissioner Revenue, Government of Punjab for final decision and the same shall be binding on all parties.

b. Any other terms and condition, mutually agreed to prior to finalization of the order/agreement shall be binding on the supplier.

c. Deputy Commissioner, Kapurthala and Ramtech Corporation shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the purchase order.

d. All disputes, differences, claims and demands arising under or pursuant to or touching the contract shall be referred to the sole arbitrator, the Financial Commissioner Revenue to Government of Punjab. The award of the sole arbitrator shall be final and binding on both the parties under the provisions of the Arbitration Act, 1940 or by statutory modification reenactment thereof for the time being in force."

Since disputes and differences had arisen between the parties, vide letter dated 1.10.2005, the petitioner invoked the arbitration clause requesting the Deputy Commissioner who had entered into the agreement, to appoint the Arbitrator in terms of the arbitration clause.

On the last date of hearing, Mr.A.G.Masih, learned Senior Deputy Advocate General, Punjab fairly asked for time to check up whether any reply to said letter of invocation of arbitration agreement was sent to the petitioner. Having instructed that no reply was sent by the respondents, Mr.Masih reiterated the stand earlier taken by the respondents which is too far to say the least. According to learned counsel for the respondents, in the letter invoking the arbitration clause the petitioner had mentioned that the dispute was already

pending adjudication with the Financial Commissioner who was *persona designata* in terms of the arbitration agreement, therefore, the petitioner could not have invoked the arbitration clause. This argument is devoid of merit as the law is well settled.

A party can invoke the arbitration clause and the opposite party has to supply the vacancy in terms of the said arbitration clause. In this case, the letter invoking the arbitration clause was written on 1.10.2005. No reply was sent. The petitioner filed the petition under Section 11 of the Act on 6.12.2005. From 6.12.2005 till date, no such reply has been sent by the respondents taking the plea which has been taken before me today. It is simply an after thought. Although the Financial Commissioner Revenue, Government of Punjab was a *persona designata* to act as an Arbitrator in terms of the arbitration agreement, however, the dispute was to be referred by the person who has executed the agreement i.e. the Deputy Commissioner of State of Punjab. Having not done so, the respondents have forfeited their right to supply the vacancy in terms of the arbitration clause. Therefore, I appoint Justice G.C.Mittal (retired Chief Justice) as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

The intimation of appointment be sent to the Arbitrator.

Parties to appear before the Arbitrator on 14.9.2007 at 4.00 P.M.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

July 26, 2007

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